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Supreme Court of the United States

October Term 1967
No. 1111

JEHOVAH'S WITNESSES
in the State of Washington, *et al.*,
Appellants,
v.
KING COUNTY HOSPITAL UNIT No. 1
(Harborview), *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

APPELLEES' MOTION TO DISMISS OR AFFIRM

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the appeal of the appellants herein be dismissed on the ground that the appeal is not within the jurisdiction of this court or, in the alternative, move that the decree of the District Court be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

JURISDICTION

The jurisdiction of this court is challenged on the ground that the three-judge court was improperly convened for the reason that the appellants actually sought a declaratory judgment and not an injunction as required by Section 2281, Title 28, United States Code.

STATEMENT

This is a direct appeal from a judgment of a three-judge court dismissing an action brought by the appellants, who are members of the Jehovah's Witness sect in the State of Washington, against various individuals and officers of the State of Washington. The officers named are judges of the Superior Courts of the State of Washington, the members of the Board of Regents of the University of Washington, the President of the University of Washington, the Attorney General of the State of Washington. In addition, certain officers of King County are named, to-wit: the members of the Board of Trustees of King County Hospital Unit No. 1.

The prayer for relief in the complaint filed with the District Court for the Western District of the State of Washington is divided into two parts. Part A asks that the court declare as the legal rights of the plaintiffs some seventeen items including a declaration that the Juvenile Court Act of the State of Washington is, on its face and as construed and applied to the plaintiffs, unconstitutional, invalid, null and void. The second part of the prayer for relief asks the court to permanently enjoin all defendants from depriving plaintiffs of any rights, privileges or immunities secured by the Constitution and laws of the United States and from in any way enforcing, applying or seeking to apply the Juvenile Court Act of the State of Washington (Chapter 13.04 R.C.W.) in order to remove plaintiff children from the custody of their parents on the ground that said parents have refused to permit their children to receive a blood transfusion. (R. 1)

Plaintiffs, in their memorandum of law to the three-judge court regarding *Phillips v. United States*, contended

that they had met all the "clearly stated" prerequisites of 28 U.S.C., Section 2281, in that

"(1) Plaintiffs seek a permanent injunction.

"(2) Plaintiffs seek to enjoin the enforcement of state statutes, R.C.W. 13.04.010 (12) and R.C.W. 13.04.095.

"(3) Plaintiffs seek to enjoin the enforecemnt or execution of the statutes by restraining the acts of *state officers, namely, superior court judges.*

"(4) Plaintiffs seek the injunction on the ground that the statutes are unconstitutional." (R. 518) (Emphasis supplied)

ARGUMENT

I. A Three-Judge Court Was Improperly Convened, and Therefore, Direct Appeal to This Court Does Not Lie, and the Appeal Should Be Dismissed

The Supreme Court lacks jurisdiction over appeal from three-judge district courts if the three-judge district court was improperly convened. *Zunel v. Rusk,* (Conn. 1965) 85 S.Ct. 1271, 381 U.S. 1, 14 L.Ed.2d 179; *Stainback v. Mo Hock Ke Lok Po,* (Hawaii 1949) 69 S.Ct. 606, 336 U.S. 368, 93 L.Ed. 741; *Moody v. Flowers,* (Ala. and N.Y. 1967) 87 S.Ct. 1544, 387 U.S. 97, 18 L.Ed.2d 643.

A. Requirements of 28 U.S.C., Section 2281, are of substance not of form.

In *Wilentz v. Sovereign Camp, Wp. O.W.,* (N.J. 1939) 306 U.S. 573, 83 L.Ed. 994, 59 S.Ct. 709, Justice Stone ruled that "the requirements of (the predecessor of Section 2281) are of substance, not of form, and they are not satisfied by joining as nominal parties defendant state officers whose action is not the effective means of the enforcement or execution of the challenged statute." In so

ruling, Justice Stone cited *Oklahoma Gas Company v. Packing Company*, (Okla. 1934) 292 U.S. 386, 78 L.Ed. 1318, 54 S.Ct. 2732, which held that the "three-judge procedure is an extraordinary one, imposing a heavy burden on the federal courts, with attendant expense and delay. That procedure, designed for a specific class of cases, sharply defined, should not be lightly extended . . . limitations of the statute would be defeated were it enough to keep three judges assembled that a plaintiff could resort to a mere form of words in the complaint alleging that the suit is one to restrain action of state officers, with no support whatever in fact or law . . . when it becomes apparent that the plaintiff has no case for three judges, though they may have been properly convened, action is no longer prescribed by a three-judge court."

As Justice Stone observed in *Wilentz, supra*, "the extraordinary procedure before a court of three judges . . . cannot be extended to cases in which there is no substantial basis for relief by injunction restraining the action of state officers in enforcing or carrying out a challenged statute of general application."

While plaintiffs' complaint, in form, asks for injunctive relief, they make no allegation in their complaint of specific acts threatened by any of the defendants which could be enjoined. Injunctive relief is primarily a preventive remedy; its province is to afford relief against further acts *actually threatened*. Generally speaking, rights already lost and wrongs already perpetrated cannot be corrected by injunction. 28 Am. Jur. 493-494, *Injunctions*, Section 5. The acts complained of by appellants are only relevant in terms of declaratory relief. They do not and cannot support an

injunctive decree in that they deal only with the past and not with the future. There is no allegation of any specific act being threatened which could justify an injunctive decree.

B. Actions for Declaratory Judgment do not require the convening of a three-judge court.

This court has repeatedly held that Section 2281 is a technical requirement that must be construed narrowly and strictly, and only those cases which clearly fall in one of the classes described therein should be referred to three-judge courts. *Swift and Company v. Wickham,* (New York 1965) 86 S.Ct. 258, 382 U.S. 111, 15 L.Ed.2d 194. No mention is made in Section 2281 that a three-judge court should be convened to hear matters contesting the constitutionality of state statutes and seeking relief by way of declaratory judgment. When the policy desired to be effected by the enactment of Section 2281 is remembered, it is readily seen that it should not be applied to action seeking declaratory relief. That policy was to prevent a single federal judge from *suspending* enforcement of state legislation having general application. *Swift and Company v. Wickham, supra.*

While this court has not directly ruled on this question, it is inferred in its ruling in *Kennedy v. Mendoza-Martinez,* (1963) 372 U.S. 144, 154 L.Ed.2d 66, 83 S.Ct. 554, that a three-judge court should not be convened where it is apparent that the only real relief sought by the plaintiff is a declaratory judgment. See also *City Services Company v. McLoughlin,* (1960) 189 F.Supp. 227 (Dist. of Col.). See also annotation to *Florida Lime and Avocado Growers v. Jacobson* in 4 L.Ed.2d 1943.

Where the three-judge district courts were improperly convened, appeal should be taken to the Circuit Court of Appeals and not to the Supreme Court. *Moody v. Flowers,* (Ala. and N.Y. 1967) 87 S.Ct. 1544, 387 U.S. 97, 18 L.Ed. 2d 643.

Appellants in this matter have protected themselves in this respect by giving their notice of appeal to the Circuit Court of Appeals for the Ninth Circuit simultaneously with their notice of appeal to this court.

II. The Questions Raised by the Appeal Were so Unsubstantial as Not to Warrant Further Argument, and the Judgment Should Be Affirmed

For argument in this regard appellees adopt portions of the Opinion of the court below from which we quote from pages 1 and 7 to 10, together with the footnotes, thereto:

P. 1:

> "The principal plaintiffs herein are individual Jehovah's Witnesses whose minor children, contrary to the expressed beliefs and directions of their parents, were given blood transfusions under court orders obtained pursuant to the provisions of the Juvenile Court Law of the State of Washington, namely R.C.W. 13.04.010(12) and 13.04.095."[1]

FOOTNOTES TO QUOTED PORTION OF OPINION

1. R.C.W. 13.04.010(12) of the Juvenile Court Law of the State of Washington provides:

> *"Juvenile court law—Dependent and delinquent children defined —Wards of state.* This chapter shall be known as the 'Juvenile Court Law' and shall apply to all minor children under the age of eighteen years who are delinquent or dependent; and to any person or persons who are responsible for or contribute to, the delinquency or dependency of such children.
>
> "For the purpose of this chapter the words 'dependent child' shall mean any child under the age of eighteen years.
>
> • • •
>
> "(12) Who is grossly and willfully neglected as to medical care necessary for his well-being."

"According to the Jehovah's Witnesses, blood transfusions involve certain risks, are of limited value, and there are alternative means of treatment which makes the use of such therapy unnecessary and inadvisable.[2] With respect to this view, plaintiffs contend that in the cases at issue doctors have never testified as to the hazards, dangers or uncertainties of blood transfusions, and the alternative means of treatment have not been placed before any of the superior court judges.

"Nevertheless, it is the prevailing medical view that blood transfusions are not only safe but necessary in

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1. R.C.W. 13.04.010(12) of the Juvenile Court Law of the State *"Commitment of child—Order of court—Powers of department of institutions—Order rescinded when reformation complete.* When any child shall be found to be delinquent or dependent, within the meaning of this chapter, the court shall make such order for the care, custody, or commitment of the child as the child's welfare in the interest of the state require. Subject to further order, the court may commit the child:

"(1) To the care of such child's parents, subject to supervision of the probation officer; or

"(2) To the custody of a probation officer, subject to such conditions as the judge may impose; or

"(3) To a reputable citizen or association able and willing to receive and care for such child; or

"(4) To an appropriate private agency authorized to care for such children; or

"(5) To the department of public assistance; or

"(6) To the department of institutions.

"In no case shall a child be committed beyond the age of twenty-one years. A child committed to the department of institutions shall be subject to the supervision and control thereof and the department shall have the power to parole such child under such conditions as may be prescribed.

"The department of institutions shall have the power to discharge such child from custody, and the court shall have the power to rescind the commitment of such child, whenever his or her reformation shall be deemed complete."

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2. Plaintiffs rely on evidence they contend establishes that their views are scientifically supportable, since in the area of blood transfusion knowledge is rapidly expanding, opinions are changing, hazards exist. alternative means of treatment are possible and doctors disagree. The plaintiffs offered evidence tending to show that, as to many types of situations where blood transfusions are often given, there exists medical opinion that transfusion are of little value and, in

those kinds of situations presented to the court in the specific instances involving the minor plaintiffs in this case.[3]

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addition, may substantially harm the patient. They have also offered evidence tending to show that there is opinion that blood transfusions are never indicated, since there are always treatments available which are better than transfusions.

Dr. Exner tstified specifically that transfusions are contraindicated as treatment for continued gastrointestinal bleeding (Tr. 208), and erythroblastosis fetalis (Tr. 210), and that better treatments always exist for excessive hemorrhaging during major surgery (Tr. 212). He also testified that transfusions are never mandatory (Tr. 254).

Dr. Riggle, an osteopathic surgeon and Jehovah's Witness from Texas, testified that he had found no cases in which blood transfusions were mandatory (Tr. 267) and, in particular, that in his experience alternate therapy was satisfactory for erythroblastosis fetalis.

Dr. Lodi, a surgeon and Jehovah's Witness since 1950, testified that he has not used transfusions since 1950, and no one has died from non-transfusions (Tr. 149). However, he had not treated any cases of severe blood loss due to trauma, except one in which the victim was transfused under a court order over his objection.

Dr. Wilson, senior pathologist, King County Coroner's Office, knew of no cases in his experience in which death or disability resulted from failure to give a blood transfusion (Tr. 83). However, he also testified that there are instances where transfusions are lifesaving (Tr. 113) and that transfusions were accepted medical practice in King County (Tr. 139).

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3. The defendants have admitted that there is often substantial difference of opinion regarding the value of blood transfusions in specific instances. However, they offered proof tending to show that, for some conditions, informed medical opinion agrees that death or disability is very probable if no transfusion is given, and that the probability of recovery in such cases can be appreciably increased only if a transfusion is given. Dr. Guntheroth specifically mentioned that in profound anemia accompanied by generalized severe infection transfusion is essential to save life, and blood substitutes are of no value (Tr. 359). He was also of the opinion that blood transfusions are necessary to save life after severe loss of blood due to accident, and also when a baby is suffering from acute erythroblastosis fetalis (Tr. 391-92), and that most, if not all, medical authorities agree to this (Tr. 392).

Dr. Eloise Rosalee Giblett, who testified by deposition, noted that the medical opinion held by the great majority of practitioners in this medical community, in this country, and in the world is that there are people who would die if they were not otherwise transfused (Deposition, p. 6).

It was the considered opinion of the attending physicians in each of the cases retained in the action that a blood transfusion was or would be vital to save the life of the patient.

"As previously noted, plaintiffs argue that R.C.W. 13.04.010(12) and R.C.W. 13.04.095 are invalid under the Constitution of the United States as applied by defendants in compelling the minor children of Jehovah's Witnesses to submit to blood transfusions over the religious objections of the parents. According to plaintiffs, the reason these statutes are invalid as so applied is because they facilitate state impairment of plaintiff's religious freedom, contrary to the First and Fourteenth Amendments, and plaintiffs' parental rights as guaranteed by the Due Process Clause of the Fourteenth Amendment.

"Substantially the same argument was advanced by Jehovah's Witnesses in *Prince v. Massachusetts,* 321 U.S. 158, involving an appeal from convictions for violating Massachusetts' child labor laws. Contrary to those state laws, the aunt and custodian of a nine-year-old girl permitted and encouraged the girl to sell Bible tracts on the public streets. The aunt contended that the child was exercising her right, under the First and Fourteenth Amendments, to preach the gospel. She buttressed this argument with a claim of parental rights as secured by the Due Process Clause of the Fourteenth Amendment.

"The Supreme Court affirmed the judgment, holding that the family is not beyond regulation in the public interest, as against a claim of religious liberty. Among other things, the court said:

> "'* * * neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as *Parens patriae* may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty

to expose the community or the child to communicable disease or the latter to ill health or death. *People v. Pierson*, 176 N.Y. 201, 68 N.E. 243. The catalogue need not be lengthened. It is sufficient to show what indeed appellant hardly disputes, that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction. (Footnotes omitted) 321 U.S. at 166-167.

"'• • • Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.' 321 U.S. at 170.

"It appears to us that holding of *Prince* is applicable here and that our special three-judge court is bound by that decision. Thus, whatever merit there be in plaintiffs' argument that a more thorough consideration of philosophic principles calls for a contrary conclusion, we are not in a position to decide contrary to *Prince*. It need only be added that our case, as was also true in *Prince*, does not involve any of the rights of parents to train and indoctrinate their children in religious matters.

"It is true that in *Prince*, the court made it clear that it did not intend that opinion to lay the foundation for every state intervention in the indoctrination and participation of children in religion which may be done in the name of their health and welfare. (321 U.S. at 171). But we think it does lay the foundation, binding upon us, for the particular state intervention in the name of health and welfare which is here under review. As stated in *Prince* (321 U.S. at 166), 'The right to practice religion freely does not include liberty to expose • • • the child • • • to ill health or death.'

"In this special three-judge court case we are not bound by any judicial decisions other than those of the United States Supreme Court. But it is appropri-

ate to note that in *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 104 N.E.2d 769, 774, 30 A.L.R.2d 1132, testing the validity of a court order declaring the minor child of Jehovah's Witnesses a dependent child for the purpose of compelling a blood transfusion, the Supreme Court of Illinois construed the *Prince* case as we do here. Thus, on the basis of the *Prince* decision, the Illinois court held that the Juvenile Court Law of that state is not unconstitutional as so applied. In an exhaustive opinion the Supreme Court of New Jersey similarly interpreted *Prince* in a blood transfusion case involving the minor child of Jehovah's Witnesses. See *State v. Perricone*, 37 N.J. 463, 181 A.2d 751, 756-757. See also, *Hoener v. Bertinato*, 67 N.J. Super. 517, 171 A.2d 140, 143.

"We therefore hold, on the compelling authority of *Prince* that R.C.W. 13.04.010(12) and R.C.W. 13.04.-095 are not invalid under the Constitution of the United States, as applied in this case."

It should be noted that the issues raised in this appeal were previously before this court by way of petition for writ of certiorari in *State ex rel. Wallace v. Labrenz, supra*, and certiorari was denied. *State ex rel. Wallace v. Labrenz*, (Oct. 1942) No. 131, 344 U.S. 824, 97 L.Ed. 642, 73 S.Ct. 24.

III. If the Case Is to Be Determined Differently on Its Merits, the Doctrine of Abstention Would Properly Apply and the Judgment of the Lower Court Should Be Affirmed

For argument in this regard appellees again adopt portions of the Opinion of the court below from which we quote from pages 10 through 14, together with footnotes thereto.

"Assuming, nevertheless, as plaintiffs contend, that the *Prince* case is not dispositive of the main action because (1) the supreme court specifically limited the

Prince holding to the facts of the case, and (2) the supreme court to date has not passed on the merits of the constitutional questions involved in the blood transfusion cases, this court would have before it an open question on the merits of the case. If this be the case sound judicial administration would warrant the application of the equitable abstention doctrine[4] with respect to the federal questions raised by plaintiffs' constitutional attack on the state statute.

"Equitable abstention is designed to restrict the exercise of federal jurisdiction, at least in the first instance, by having the federal court defer to the state courts in the consideration and interpretation of state statutes. Because the award of equitable relief is traditionally regarded as a discretionary matter, the court should properly consider whether the circumstances warrant the initial construction of the statute in question by the highest court of the state and, if so, abstain from the exercise of federal jurisdiction.

"Where the constitutionality of a state statute, as in the instant case, is involved, there are sound reasons why any uncertainty as to its meaning should first be resolved by the state. The policy of comity between

4. When state action is challenged in a federal court on federal constitutional grounds and there are questions of state law which may dispose of the case or materially change the nature of the constitutional problems, the federal court may decline to proceed though it has jurisdiction under the Constitution and the statutes. This abstention policy is usually referred to as the *Pullman* doctrine from the case of *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941). The company in that case sought to enjoin the enforcement of an order of the Texas Railroad Commission on the grounds that the order denied the company rights under the Fourteenth Amendment and that the Commission lacked authority under Texas law to make the order in question. A unanimous Supreme Court ordered the trial court to abstain from deciding the case so that the state court could decide the state issues. In this way the federal court avoided deciding federal constitutional questions prematurely or unnecessarily; for if the state court held the order unauthorized as a matter of state law, there would be no need for the federal court to pass on the federal questions. Abstention is proper in order to avoid "unnecessary friction in federal-state relations, interference with important state functions, tentative decisions on questions of state law, and premature constitutional adjudication." *Harmon v. Forssenius*, 380 U.S. 528, 534 (1965).

state and federal governments suggests one reason why the interpretation of a state statute should first be rendered by state authorities. Also, state courts ideally should be better informed about state policies and purposes so that construction of the statute may be achieved more accurately and meaningfully. In this connection, the supreme court in *Prince*, unlike this court, had the benefit of the construction placed on the statute therein involved by the Massachusetts high court. The supreme court noted that the decision of the Massachusetts court on what constituted a 'sale' or 'offer of sale' differed from the trend in other states, but that the supreme court was bound by the state determination, 321 U.S. 158, 163 and annotations 5 and 6. More importantly, the resolution of uncertain statutory authority by the state courts may obviate federal adjudication of constitutional questions arising from the enactment.[5]

"The abstention doctrine, however, is not automatically applied. As already noted, whether the court should exercise its equity powers is a discretionary matter, and the decision to defer action initially depends upon a finding that the special circumstances prerequisite to equitable abstention exist. Since the practical effect of the court's decision to abstain in a case over which it has been given jurisdiction by law is to deny the plaintiff his right to a federal forum, the decision to abstain not only requires a reasonably uncertain issue of state statutory interpretation, but

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5. See *Harrison v. NAACP*, 360 U.S. 167 (1959), where there was a finding that the state law was uncertain and abstention was ordered. In *NAACP v. Bennett*, 360 U.S. 471 (1959), the Supreme Court reversed the district court for failing to consider whether the state law was uncertain. Again, the major consideration behind the doctrine of abstention is that the federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to pass upon them. See *e.g.*, *Government & Civic Employees v. Windsor*, 353 U.S. 364 (1957); *Albertson v. Millard*, 345 U.S. 242 (1953); *Shipman v. DuPre*, 339 U.S. 321 (1950); *American Federation of Labor v. Watson*, 327 U.S. 582 (1946); *Spector Motor Service, Inc. v. McLaughlin*, 323 U.S. 101 (1944); *Chicago v. Fieldcrest Dairies, Inc.*, 316 U.S. 168 (1942); *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496 (1941).

also the availability of adequate state procedures for resolving the uncertainty.

"A first prerequisite, then, is that the challenged application of the state enactment be fairly open to interpretation. Where it appears that the statute necessarily had to be interpreted in the manner under attack, no useful purpose would be served by federal abstention to permit the state court to pass upon such application.[6] The abstention doctrine becomes applicable in those situations where it is uncertain that the state enactment authorized the restrictions imposed on the persons bringing the action or on their activities.[7] This condition would appear to be satisfied in the instant case.

"The statutory application herein challenged permits a child to be made a ward of the court upon a finding that the child is 'grossly and wilfully neglected as to medical care necessary for his well-being.' However, it seems pertinent to ask whether 'gross and wilful neglect' is a permissible finding under the statute when a parent, upon religious grounds or because of his views as to medical treatment, refuses to consent to blood transfusions for his minor child where the attending physician has determined blood transfusions are medically necessary. As applied here when a Jehovah's Witness desires to provide medical care for his child, but cannot consent to a particular form of medical treatment, such as blood transfusions, determined to be necessary by the attending physician, does the Juvenile Court Law require that child to be characterized as one 'grossly and wilfully neglected as to medical care necessary for his well-being?' The

6. See, *e.g.*, *Dombrowski v. Pfister*, 380 U.S. 479 (1965); *Baggett v. Bullitt*, 377 U.S. 360 (1964); *Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713 (1962).

7. See *Baggett v. Bullitt*, *supra*, note 9 at pages 376-77, and note 13. Moreover, even where the state court has considered the precise issue constitutionally attacked in the federal court, abstention has been exercised on the ground that the federal constitutional objections had not been presented to the state court and might have caused that court to interpret the statute differently had those objections been presented. *City of Chicago v. Achison, T. & S. F. RR.*, 357 U.S. 77 (1958).

statute appears to have two parts: one portion requiring medical care necessary for the well-being of the child, and the other, under a plausible interpretation, providing that the neglect in failing to provide or agree to the medical treatment recommended as necessary be gross and wilful. Although a blood transfusion might be necessary for the well-being of the child, refusal to consent to a blood transfusion, coupled with willingness to consent to substitutes, if any, may not constitute 'gross and wilful' neglect. Use of the language 'grossly and wilfully' in the statute would thus appear to make the application of the statute to plaintiffs in the blood transfusion cases uncertain.

"The second prerequisite to the application of the abstention doctrine is that adequate state procedures exist to resolve the uncertainty of the law. This prerequisite would appear to be satisfied by the Washington Uniform Declaratory Judgments Act, R.C.W. 7.24.020. That statute provides in pertinent part:

> 'A person * * * whose rights, status or other legal relations are affected by a statute * * * may have determined any question of construction or validity arising under the * * * statute * * * and obtain a declaration of rights, status or other legal relations thereunder.'

"Although the cases involving the challenged application of the Juvenile Court Law are moot by the time of appeal, jurisdiction may still be exercised under the state declaratory judgments act. When a matter of public interest is involved the Washington supreme court has retained jurisdiction to decide the broad issues even though the particular case raising them is moot.[8] The instant case would seem to be a proper

8. See *National Electrical Contractors Assoc. v. Seattle School District No.* 1, 66 Wn.2d 14 (1965). In its opinion, the Washington Supreme Court quoted and specifically relied upon the following language from the opinion of the Illinois Supreme Court in a blood transfusion case, *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 104 N.E.2d 769, 772, (1952) as support for the proposition that the court should decide a moot issue where sufficient public interest in the question warrants:

"Before we reach the merits, we meet the State's contention that the case is now moot and should be dismissed because the

one for an application of the Washington Declaratory Judgments Act similar to the one made in the *National Electrical Contractors* case.[9] In the instant case basic rights are thrown into conflict: the *parens patriae* power of the state versus the constitutional and civil rights of Jehovah's Witnesses. In this connection, the public importance in the correct construction of the Juvenile Court Law cannot be doubted, and the superior courts of the state should have the benefit of the construction of this statute by the state supreme court for future guidance in similar situations.

"The action before us is, in reality, a declaratory judgment action wherein the application of a state statute is being challenged on constitutional grounds; the challenged application presents a question of statutory interpretation not heretofore passed upon by the Supreme Court of the State of Washington. State procedures exist for resolving the issues of construction raised by the application. The essential prerequisites for invoking the doctrine of equitable abstention we believe are present. The policy behind the development of the doctrine—in general to preserve the framework of federalism, and in particular to give the

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blood transfusion has been administered, the guardian discharged, and the proceeding dismissed. Because the function of courts is to decide controverted issues in adversary proceedings, moot cases which do not present live issues are not ordinarily entertained. 'The general rule is that when a reviewing court has notice of facts which show that only moot questions or mere abstract propositions are involved or where the substantial questions involved in the trial court no longer exist, it will dismiss the appeal or writ of error.' *People v. Redlich*, 402 Ill. 270, 279.

"But when the issue presented is of substantial public interest, a well-recognized exception exists to the general rule that a case which has become moot will be dismissed upon appeal. (See cases collected in 132 A.L.R. 1185.) Among the criteria considered in determining the existence of the requisite degree of public interest are the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question."

(At 66 Wn.2d 14, 19-20).

9. *Ibid.*

state an opportunity to mold its policy to conform to or accord with constitutional standards—favor utilizing the doctrine in this case. Indeed, resolution of the matter by the state might avoid the constitutional issues presented by the application of the statute.

"In sum, if we, as a specially-constituted three-judge court, were to conclude the *Prince* decision not controlling we would then consider the case before us as tailored to the exercise of federal abstention.

"For the reasons set forth herein, the plaintiffs are not entitled to the relief sought and the action will be dismissed as to all defendants.

"DATED November 20th, 1967.

[SIGNATURES]"

Respectfully submitted,

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